

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

FRANK DUANE SWARTZ,	:	
Petitioner	:	CIVIL ACTION NO. 3:17-2172
v.	:	JUDGE MANNION
ROBERT GILMORE, <u>et al.</u>,	:	
Respondent	:	

ORDER

Pending before the court is the report of Magistrate Judge Martin C. Carlson which recommends that the petition for writ of habeas corpus filed in the above-captioned matter be denied and that a certificate of appealability should not issue. (Doc. 23). The petitioner requested and was granted an extension of time until July 15, 2019, to file objections to Judge Carlson's report. (Doc. 25). Despite having been granted more time to file objections than he requested, as of the date of this order, the petitioner has failed to file any objections to the report. Upon review, the report of Judge Carlson will be adopted in its entirety and the petition for writ of habeas corpus will be denied.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v.

Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In his report, Judge Carlson thoroughly reviewed the instant petition and concluded: (1) the petition is untimely; (2) the petitioner has presented a number of claims that are unexhausted and procedurally barred; and (3) the petitioner's claims fail on their merits. For all of these reasons, Judge Carlson recommends that the petition be denied. The court has reviewed the record in this case and finds no clear error of record. The court agrees with the sound reasoning which led Judge Carlson to conclude that the petition should be denied. The court further agrees that there is no basis for the issuance of a certificate of appealability. Therefore, the court will adopt the report of Judge Carlson in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report of Judge Carlson, (Doc. 23), is ADOPTED IN ITS ENTIRETY.**
- (2) The petition for writ of habeas corpus, (Doc. 1), is DENIED.**

- (3) A certificate of appealability **SHALL NOT ISSUE.**
- (4) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 13, 2019

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